

Deborah Hilsman

09/28/2004 06:09 PM

To: Adams Jas Jeffrey <jas.adams@doj.state.or.us>

cc:

cc: Deborah Hilsman/R10/USEPA/US@EPA

Subject: Re: Robert Kerivan amended cease and desist order

Jas---Got your message. I'll fax to you both the amendment and the original order tonight. Please feel free to contact me at 206-553-1810 if you have any questions about the amended order.

Adams Jas Jeffrey <jas.adams@doj.state.or.us>



Adams Jas Jeffrey  
<jas.adams@doj.state.  
or.us>

09/28/2004 03:52 PM

To: Deborah Hilsman/R10/USEPA/US@EPA

cc:

Subject: Robert Kerivan amended cease and desist order

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*

Ms. Hilsman -- I spoke with Special Agent Jim Houseman of NOAA /NMFS Enforcement in Roseburg today about the Robert Kerivan (Bridgeview Vineyards) matter. He suggested I email you. Could you fax me a copy of the EPA's amended cease and desist order, with which evidently Mr. Kerivan is now complying? My fax number in Salem is 503-378-6306.

I am handling the state appeal involving Mr. Kerivan on the issue of Oregon law there involved. That issue is whether ORS 196.810(1)(b) gives farmers *carte blanche* to remove unlimited amounts of gravel from salmonid streams without a permit, as the Oregon circuit court judge in Josephine County has ruled. On behalf of the Division of State Lands, I am arguing on appeal that the exception for customary agricultural activities more narrowly applies only to a permit requirement for removal of less than 50 cubic yards of gravel from salmonid streams. An exception to the lowered regulatory threshold on salmonid streams (from 50 cubic yards to 0 cubic yards) is what farmers obtained in Oregon from

the legislature in 1993 when SB 192 was enacted.

I would like to review the cease and desist order to determine whether it would be product to ask the Oregon Court of Appeals to take judicial notice of it vis-a-vis the federal regulatory process as it concerns Mr. Kerivan. Thanks -- Jas. Adams

Jas. Jeffrey Adams

Sr. Assistant Attorney General

Office of Oregon Attorney General

(503) 378-4402, ext 325

(503) 229-5725 (Tuesdays)



Adams Jas Jeffrey  
<jas.adams@doj.state.  
or.us>

To: Deborah Hilsman/R10/USEPA/US@EPA  
cc:  
Subject: RE: Robert Kerivan amended cease and desist order

11/30/2004 10:08 AM

Deborah: Clarence Greenwood has moved to strike the Compliance Order that you faxed me on September 28th and which I attached to my reply brief. His technical points objecting to the Order are: (1) the Compliance Order is not a certified copy, certified by the custodian; (2) the order is not signed by the person listed (Elbert Moore) but by someone else; (3) there are hand alterations on the order in the footer and case heading; (4) the form of the Order has been changed since the copy attached to the reply brief was issued; (5) Bridgeview contends it is still negotiating over the final version of the order.

I can fax the motion to strike to you if you like. Bridgeview objects to the relevance of the order, but my view is that Bridgeview opened the door when it contended in its responding brief that federal regulation obviated the need for any state regulation; my point by way of response was only that Bridgeview has not always complied with federal law.

But my real question to you is: Is there now a final version of the Compliance Order that will satisfy all or most of the points listed above? If so, can you please fax that version of the Compliance Order to me at 503-378-6306? If not, what is the current status of negotiations, etc., concerning the compliance order?

My response to this motion is due very soon (December 7), so time is of the essence. Please let me know your thoughts on any or all of the listed points. Thanks! -- Jas.

Jas. Jeffrey Adams  
Sr. Assistant Attorney General  
Office of Oregon Attorney General  
(503) 378-4402, ext 325  
(503) 229-5725 (Tuesdays)

-----Original Message-----

From: Hilsman.Deborah@epamail.epa.gov  
[mailto:Hilsman.Deborah@epamail.epa.gov]  
Sent: Tuesday, September 28, 2004 6:13 PM  
To: Adams Jas Jeffrey  
Subject: Re: Robert Kerivan amended cease and desist order

Jas---Got your message. I'll fax to you both the amendment and the original order tonight. Please feel free to contact me at 206-553-1810 if you have any questions about the amended order.

Adams Jas Jeffrey  
<jas.adams@doj.st  
Hilsman/R10/USEPA/US@EPA  
ate.or.us>  
amended cease and desist order  
09/28/2004 03:52  
To: Deborah  
cc:  
Subject: Robert Kerivan



PM

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*

Ms. Hilsman -- I spoke with Special Agent Jim Houseman of NOAA /NMFS Enforcement in Roseburg today about the Robert Kerivan (Bridgeview Vineyards) matter. He suggested I email you. Could you fax me a copy of the EPA's amended cease and desist order, with which evidently Mr. Kerivan is now complying? My fax number in Salem is 503-378-6306.

I am handling the state appeal involving Mr. Kerivan on the issue of Oregon law there involved. That issue is whether ORS 196.810(1)(b) gives farmers carte blanche to remove unlimited amounts of gravel from salmonid streams without a permit, as the Oregon circuit court judge in Josephine County has ruled. On behalf of the Division of State Lands, I am arguing on appeal that the exception for customary agricultural activities more narrowly applies only to a permit requirement for removal of less than 50 cubic yards of gravel from salmonid streams. An exception to the lowered regulatory threshold on salmonid streams (from 50 cubic yards to 0 cubic yards) is what farmers obtained in Oregon from the legislature in 1993 when SB 192 was enacted.

I would like to review the cease and desist order to determine whether it would be product to ask the Oregon Court of Appeals to take judicial notice of it vis-a-vis the federal regulatory process as it concerns Mr. Kerivan. Thanks -- Jas. Adams

Jas. Jeffrey Adams  
Sr. Assistant Attorney General  
Office of Oregon Attorney General  
(503) 378-4402, ext 325  
(503) 229-5725 (Tuesdays)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue  
Seattle, WA 98101

December 1, 2004

Reply To  
Attn Of: ORC-158

Jas. Jeffrey Adams  
Assistant Attorney General  
1162 Court St., Suite 400  
Salem, Oregon 97301-4096

Re: Robert Kerivan and Bridgeview Vineyards, Inc.  
EPA Docket No. CWA-10-2003-0012

Dear Mr. Adams:

Enclosed is a file copy of the Compliance Order issued in the matter referenced above, by the U.S. Environmental Protection Agency (EPA) on November 29, 2002, and the letter amendment to that order dated June 24, 2004. These two documents are certified as true and correct copies of the documents contained in the files of the EPA Region 10 Office of Regional Counsel.

The redaction in the docket number and the footer on the first page of the November 29<sup>th</sup> compliance order reflects that the docket number of the case required changing. Clarence Greenwood, attorney for Respondents Robert Kerivan and Bridgeview Vineyards, Inc., was notified of the change in docket number by letter dated December 6, 2002. The June 24, 2004 amendment to the Compliance Order removed Howard Pickle as a respondent.

The November 29, 2002 compliance order was signed by a delegate fully authorized to act for Elbert Moore during his absence from the office.

The Compliance Order as amended is a final unilateral order not subject to negotiation. Respondents have documented completion of the restoration work required by the compliance order as amended. EPA Region 10 has separate procedures for assessment of administrative penalties for violations of the Clean Water Act and is still considering further penalty action.

Hopefully, this responds to all questions concerning EPA's Compliance Order, as amended, issued against Respondents for violation of Section 404 of the Clean Water Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah E. Hilsman".

Deborah E. Hilsman  
Assistant Regional Counsel